

**ORDINANCE NO. 2028**

**STORMWATER MANAGEMENT ORDINANCE OF THE  
TOWN OF NEW WHITELAND, INDIANA**

**BE IT ORDAINED** by the Town Council of New Whiteland, Indiana, that:

**SECTION 1. PURPOSE / INTENT.**

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of New Whiteland through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user.
- (2) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system.
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

**SECTION 2. DEFINITIONS**

For the purposes of this ordinance, the following shall mean:

Authorized Enforcement Agent:	Employees or designees of New Whiteland designated to enforce this ordinance
Best Management Practices (BMPs):	Schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
Clean Water Act:	The federal Water Pollution Control Act (33 U.S.C. ~ 1251 et seq.), and any subsequent amendments thereto.
Construction Activity:	Activities subject to NPDES Construction Permits. Construction projects resulting in land disturbance of 1 acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.
Hazardous Materials:	Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial presence or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal Discharge:

Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in Section 6 of this ordinance.

Illicit Connections:

Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by New Whiteland or, any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by New Whiteland.

Industrial Activity:

Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

National Pollutant Discharge  
Elimination System (NPDES)  
Storm Water Discharge Permit:

A permit issued by EPA or by a State under authority delegated pursuant to 33 USC ~ 1342(b) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge:

Any discharge to the storm drain system that is not composed entirely of stormwater.

Person:

Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant:

Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Premises:

Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm Drainage System.

Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs and other drainage structures.

Stormwater: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater Pollution Prevention Plan: A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

Wastewater: Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

Watercourse: Any river, stream, creek, brook, branch, natural or man-made drainageway in or into which Stormwater runoff or floodwaters flow either continuously or intermittently.

### **SECTION 3. APPLICABILITY**

This ordinance shall apply to all water entering the Storm Drainage System unless explicitly exempted by New Whiteland.

### **SECTION 4. RESPONSIBILITY FOR ADMINISTRATION**

The New Whiteland Town Council shall administer, implement and enforce the provisions of this ordinance. The Town Council of New Whiteland may designate, in writing, an Authorized Enforcement Agent to administer and enforce this ordinance.

### **SECTION 5. SEPARABILITY**

The provisions of this ordinance are hereby declared to be separable. If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any Person shall be held invalid, such invalidity shall not affect the other provisions or application of this ordinance.

### **SECTION 6. DISCHARGE PROHIBITIONS**

#### ***Prohibitions of Illegal Discharges:***

No Person shall discharge or cause to be discharged into the Storm Drainage System or water courses any Pollutants except to the extent that Pollutants may be present in any of the following Exempt Discharges:

- (a) water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater de-watering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if de-chlorinated - typically less than one ppm chlorine), fire fighting activities, and any other water source not containing pollutants.
- (b) discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
- (c) dye testing is an allowable discharge, but requires a verbal notification to New Whiteland prior to the time of the test.
- (d) any non-storm water discharge permitted under an NPDES permit, waiver or waste discharge order issued to a discharger and administered under the

authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

***Prohibition of Illegal Connections:***

- (a) The construction, use, maintenance or continued existence of Illicit Connections to the Storm Drainage System is prohibited.
- (b) This prohibition expressly includes, without limitation, Illicit Connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (c) A Person is considered to be in violation of this ordinance if the Person connects a line conveying sewage to the MS4, or allows such a connection to continue.

**SECTION 7. SUSPENSION OF MS4 ACCESS**

***Suspension due to Illicit Discharges in Emergency Situations:***

New Whiteland, without prior notice, may suspend MS4 discharge access to a Person when such suspension is necessary to stop an actual or potential discharge which poses or may pose a threat to the environment, or to the health or welfare of persons, or to the MS4, or Waters of the United States. The Authorized Enforcement Agent and/ or the Town Council may take all steps deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize the risk to any person..

***Non Emergency Suspension due to the Detection of Illicit Discharge:***

Any Person discharging to the MS4 in violation of this ordinance may have MS4 access terminated if such termination would eliminate or minimize an Illicit Discharge. The Authorized Enforcement Agent will notify a violator of the proposed termination of MS4 access. The violator may petition the New Whiteland Town Council for a reconsideration and hearing. A Person commits an offense if the Person accesses the MS4 after access has been terminated pursuant to this section, without the prior approval of the Authorized Enforcement Agent.

**SECTION 8. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.**

Any Person subject to an Industrial or Construction Activity NPDES Storm Water Discharge Permit shall comply with all provisions of that permit. Proof of compliance with the permit may be required in a form acceptable to New Whiteland prior to and as a condition of discharges to the MS4.

**SECTION 9. MONITORING OF DISCHARGES**

- A) Applicability  
This section applies to all Premises that discharge Stormwater associated with an Industrial Activity or a Construction Activity.
- B) Access to Premises
  - (a) The Authorized Enforcement Agent shall be permitted to enter and inspect Premises subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the Authorized Enforcement Agent .
  - (b) Premise operators shall allow the Authorized Enforcement Agent to all parts of the Premises for the purpose of inspection, sampling, examination and copying of records that must be kept pursuant to the

requirements of an NPDES Permit to Discharge Stormwater, and the performance of any additional duties as defined by state and federal law. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Authorized Enforcement Agent and shall not be replaced. The costs of clearing such access shall be borne by the operator.

- (c) The Authorized Enforcement Agent shall have the right to set up on any Premises such devices as are necessary, in the opinion of the Authorized Enforcement Agent to conduct monitoring and/or sampling of the Premises' stormwater discharge.
- (d) The Authorized Enforcement Agent has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.
- (e) Unreasonable delays in allowing New Whiteland's authorized agent access to a permitted facility is a violation of a Stormwater Discharge Permit and of this ordinance. A Person who is the operator of Premises with a NPDES Stormwater Discharge Permit associated with Industrial Activity commits an offense if the Person denies New Whiteland's authorized agent reasonable access to the permitted Premises for the purpose of conducting any activity authorized or required by this ordinance.
- (f) If the Authorized Enforcement Agent has been refused access to any part of the Premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety and welfare of the community, then New Whiteland may seek issuance of a search warrant from any court of competent jurisdiction.

## **SECTION 11.**

### **REQUIREMENT TO PREVENT, CONTROL AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES**

New Whiteland will adopt requirements identifying Best Management Practices (BMP's) for activities, operations and Premises that may cause or contribute to pollution or contamination of Stormwater, the Storm Drain System or the waters of the United States. The owner or operator of commercial or industrial Premises shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the Storm Drain System or watercourses through the use of these structural and non-structural BMP's. Further, any Person responsible for a property or Premise, which is, or may be, the source of an Illicit Discharge may be required to implement, at said Person's expense, additional structural and non-structural BMP's to prevent the further discharge of Pollutants to the Storm Drain System. Compliance with terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section. These BMP's shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

## **SECTION 12.**

### **WATERCOURSE PROTECTION.**

Every Person owning property through which a watercourse passes, or such Person's lessee,

shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

### **SECTION 13. NOTIFICATION OF SPILLS.**

Notwithstanding other requirements of law, as soon as any Person responsible for Premises, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in Illegal Discharges or Pollutants discharging into Storm water, the Storm Drain System, or water of the U.S., said Person shall take all necessary steps to ensure the discovery, containment and cleanup of such release. In the event of such a release of Hazardous Materials said Person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said Person shall notify New Whiteland in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to New Whiteland within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

### **SECTION 14. ENFORCEMENT.**

#### **A) Notice of Violation.**

Whenever New Whiteland finds that a Person has violated a prohibition or failed to meet a requirement of this ordinance, New Whiteland may order compliance by written notice of violation to the responsible Person. Such notice may require without limitation:

- (a) The performance of monitoring, analyses, and reporting;
- (b) The elimination of Illicit Connections and Illegal Discharges;
- (c) That violating discharges, practices, and operations shall cease and desist;
- (d) The abatement or remediation of Stormwater pollution or contamination hazards and the restoration of any affected property and
- (e) Payment of a fine to cover administrative and remediation costs; and
- (f) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

### **SECTION 15. APPEAL PROCESS**

The owner or lessee of the Premises receiving a Notice of Violation has the right to file a notice of appeal with New Whiteland. The notice of appeal must be received within 15 days from the date of the Notice of Violation. A hearing on the appeal before the New Whiteland Town Council or its designee shall take place within 21 days from the date of receipt of the Notice of Appeal. The decision of the Town Council or its designee shall be final.

### **SECTION 16. ENFORCEMENT MEASURES AFTER APPEAL**

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 15 days of the decision of the Town Council upholding the decision, then representatives of New Whiteland shall enter upon the subject Premises and take any and all measures necessary to abate the violation and/or restore the Premises. It shall be unlawful for any Person, to refuse to allow New Whiteland or its

designated contractor to enter upon Premises for the purposes set forth above.

**SECTION 17. COST OF ABATEMENT OF THE VIOLATION**

Within 15 days after abatement of the violation, the owner of the Premises will be notified of the cost of abatement, including administrative costs. The owner may file a written protest objecting to the amount of the assessment within 15 days. If the amount due is not paid within a timely manner as determined by the decision of New Whiteland or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the Premises and shall constitute a lien on the Property for the amount of the assessment.

**SECTION 18. INJUNCTIVE RELIEF**

It shall be unlawful for any Person to violate any provision or fail to comply with any of the requirements of this ordinance. If a Person has violated or continues to violate the provisions of this ordinance, New Whiteland may petition for a preliminary or permanent injunction restraining the Person from activities which would create further violations or compelling the Person to perform abatement or remediation of the violation.

**SECTION 19. COMPENSATORY ACTION**

In lieu of enforcement proceedings, penalties, and remedies authorized by this ordinance, New Whiteland may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

**SECTION 20. VIOLATIONS DEEMED A PUBLIC NUISANCE**

In addition to the enforcement processes and penalties provided herein, any condition caused or permitted to exist in violation of any of the provisions of this ordinance, that is or may become a threat to public health, safety and welfare, and is declared and deemed a nuisance, may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin or otherwise compel the cessation of such nuisance may be taken.

**SECTION 21. MONETARY FINES**

Any Person that has violated or continues to violate this ordinance shall be subject to a civil penalty of up to \$500.00 dollars per violation, per day. New Whiteland may recover all attorney's fees, court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

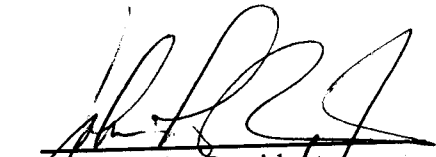
**SECTION 22. REMEDIES NOT EXCLUSIVE**


The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the New Whiteland to seek cumulative remedies.

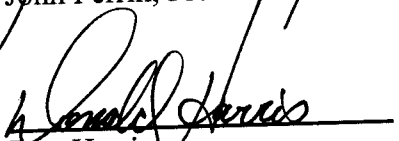
This ordinance shall be in full effect after Town Council adoption and required publication. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

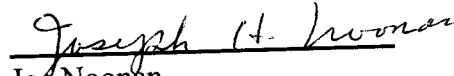
Adopted by the Town Council of New Whiteland, this day of April 18, 2006.

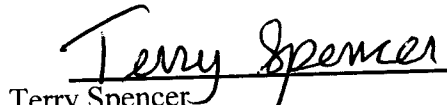
**TOWN COUNCIL OF  
NEW WHITELAND**

  
John Perrin, President

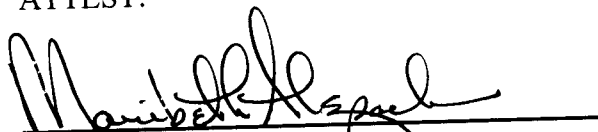
  
Scott Alspach

  
Don Harris

  
Joe Noonan

  
Terry Spencer

ATTEST:

  
Maribeth Alspach, Clerk Treasurer

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